

4/21/00 Copy for Johnny

COMMONWEALTH OF KENTUCKY
LAWRENCE CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 97-CI-00264

EASTERN CRANE, INC.,

PLAINTIFF,

COPY

VS.

KENTUCKY POWER COMPANY
and MITCH THOMAS,

DEFENDANTS.

DEPOSITION OF JAMES G. BURTON

On the 16th day of March, 2000, beginning at 2:00 p.m., at the law offices of Gray, Woods & Cooper, 1505 Carter Avenue, Ashland, Kentucky, before me, Sharon K. Altany, Court Reporter within and for the Commonwealth of Kentucky, appeared JAMES G. BURTON, Witness, who, being by me first duly sworn, gave his oral deposition in the cause pursuant to notice of Counsel for the respective parties as hereinafter set forth. Said deposition is being taken for the purpose of discovery or any use authorized by the Kentucky Rules of Civil Procedure.

ACCURATE REPORTING SERVICE, INC.
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Rec'd 3/23/00

1 APPEARANCES: On behalf of the Plaintiff:

2 HON. MARRS ALLEN MAY
3 209 Second Street, Suite One
4 P.O. Box 1465
5 Pikeville, Kentucky 41502

6 On behalf of the Defendants:

7 HON. WENDELL S. ROBERTS
8 Gray, Woods & Cooper
9 1505 Carter Avenue
10 Ashland, Kentucky 41105

11 ALSO PRESENT: Johnnie Lequire

12 I N D E X

13 EXAMINATION OF THE WITNESS:

14 JAMES G. BURTON

15 Examination by Mr. May - Page 3

16

17

18 EXHIBITS:

19

20 None

21

22

23 Reporter's Certification - Page 17

24

Errata Sheet - None

Signature Page - Waived

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1 JAMES G. BURTON, called as a witness in the
2 aforementioned action, was sworn according to law, was
3 examined and testified as follows:

4 EXAMINATION

5 BY MR. MAY:

6 Q. State your name, please.

7 A. James Garrett Burton.

8 Q. And where do you live, Mr. Burton?

9 A. 17130 Bear Creek Road, Catlettsburg,
10 Kentucky.

11 Q. I believe you're employed by Kentucky Power
12 Company or AEP?

13 A. Yes.

14 Q. What is your position with AEP?

15 A. Engineer.

16 Q. Would you tell me what the particular duties
17 of your position with the company are?

18 A. Pretty much engineer projects, do performance
19 testing, inspections. I would say that pretty much
20 covers it.

21 Q. Do you ever do any bid letting or have
22 anything to do in connection with bid letting?

23 A. I have.

24 Q. Could you sort of tell me in a general sense

1 what you say -- mean when you say "I have"?

2 A. Small projects we will go out for three bids.
3 I guess when I say I have, I have bid let some small
4 projects.

5 Q. Let me ask you this. In a dollar sense, what
6 would you construe as to be a small project?

7 A. Something that the service corporation
8 doesn't contract, I guess, would be what I would
9 consider -- that is usually under \$50,000 or something
10 like that, just giving you a round number. I have no
11 clue. It depends on how big the project is on who does
12 it.

13 Q. Obviously you're aware of the matters that
14 are involved in this case and it involves, as I
15 understand it, cleaning of certain containment ponds,
16 settlement ponds or whatever.

17 Would you have any part in the bid letting in
18 regard to the cleaning of those ponds?

19 A. Yes.

20 MR. ROBERTS: Are we talking about at
21 present?

22 THE WITNESS: At any time while I've
23 been employed?

24 BY MR. MAY:

1 Q. Right, at any time while you've been
2 employed.

3 A. Yes.

4 Q. Could you tell me when and what that
5 connection was?

6 A. I can't remember exactly what the date -- it
7 was a few years after I began employment. We did a
8 small project out there cleaning the pond, and we
9 cleaned the pond. I don't remember exactly what the
10 date was. Could you be more specific, I guess.

11 Q. Let me ask you, when did you begin working
12 with AEP?

13 A. I co-oped at the plant two summers, and then
14 I think I began employment full time in 1988.

15 Q. So you would, I guess, then place your
16 involvement in the bid letting within --

17 A. For the ponds?

18 Q. Yes.

19 A. Sometime -- I don't know -- between '90 and
20 '92 or '88 to '92, somewhere in there. Somewhere early
21 when I started there I can remember doing a project out
22 there.

23 Q. Let's go back now and get back into what your
24 educational background is. And I gather from what you

1 said you co-oped, I assume while you were in college you
2 worked for AEP or something of that nature?

3 A. Yes.

4 Q. And then went directly to work for AEP?

5 A. Yes. I got a bachelor of science in
6 mechanical engineering from the University of Kentucky.

7 Q. When was that?

8 A. I graduated in '86.

9 Q. What happened the two-year period between
10 '86 and '88?

11 A. I worked for Dayton Power and Light Company
12 in Ohio.

13 Q. What was your position there?

14 A. Mechanical engineer.

15 Q. What was your reason for leaving Dayton Power
16 and Electric?

17 A. Closer to home.

18 Q. Had an opportunity to come and work for AEP?

19 A. Yes.

20 Q. Now, as I understand and as I recall, you
21 said you were an engineer for AEP?

22 A. Yes.

23 Q. Was there any particular area -- let's say
24 from the period of 1990 through 1993 -- that you worked

1 in the plant area there, any particular responsibilities
2 that you had as an engineer?

3 A. Between '90 and '93 I was -- at one time I
4 was over the Fly Ash Dam if that's what you're -- and I
5 think '90 possibly, could be.

6 Q. In '90 you think you may have had some
7 connection with the Fly Ash Dam. Where was the Fly Ash
8 Dam located?

9 A. It's across 23. It's where the -- when you
10 burn coal, you -- what's left over is ash and the ash
11 slurry is piped over -- under 23 and up to the dam.
12 It's a landfill essentially. And, you know, there's
13 several projects that's involved there. We was doing
14 some work on the actual embankment or the dam part of
15 it.

16 Q. Would your engineering duties in any way
17 involve the settling ponds there or containment ponds
18 that are the subject of this lawsuit?

19 A. Yes, yes.

20 Q. So would it be a fair statement to say then
21 that during the period that you have been employed there
22 at the plant that this was a part of your overseeing
23 responsibilities?

24 A. Yes.

1 MR. ROBERTS: Excuse me one second. Are
2 you asking both back when he first started and now and
3 throughout that time period?

4 THE WITNESS: I don't know from '90 to
5 say -- let's assume it was '90. It could have been '89
6 to maybe '92 or some point. I don't know, two to three
7 years maybe I was over -- it was probably less than
8 that. It might have been just a year or two.

9 BY MR. MAY:

10 Q. In connection with the work that was done
11 there with those ponds, were you aware that there were
12 certain contract truckers that worked there?

13 MR. ROBERTS: Are you talking about --

14 MR. MAY: In connection with the pond.

15 MR. ROBERTS: Early --

16 MR. MAY: Early '90s -- '89 through --

17 THE WITNESS: Throughout my career?

18 BY MR. MAY:

19 Q. Yes.

20 A. Yeah, I know there's contract truckers there.

21 Q. Are you familiar with a trucking company
22 known as Davis & Burton Trucking?

23 A. Yes.

24 Q. What is your familiarity with them?

1 A. They have hauled stuff -- I don't know. They
2 have hauled stuff in there before, and they live -- the
3 owner of the company Davis & Burton -- Bill Davis lives
4 about, I don't know, two miles, three miles from where I
5 grew up.

6 Q. Who is the "Burton" in Burton & Davis
7 Trucking?

8 A. That would be Tom Burton.

9 Q. Is he any relation to you?

10 A. Yes.

11 Q. What is that relationship?

12 A. I think my dad's first or second cousin.

13 Q. Are you familiar with Mr. Thomas Burton?

14 A. Yes.

15 Q. How long have you known him?

16 A. Maybe 10 or 15 years, you know, when a guy is
17 old enough to know his relatives, you know, I guess.

18 Q. But he is a relative of yours?

19 A. Yeah.

20 Q. Do you know who the "Davis" in Burton & Davis
21 Trucking Company is?

22 A. Yes.

23 Q. Who is that?

24 A. Well, at the present time?

1 Q. Yes.

2 A. I think it's Lou Davis. I don't know exactly
3 who is the -- who is signed on, but I know the family.

4 Q. Are you familiar with Mr. Ken Davis who is
5 the agent for the operating engineers' union?

6 A. Yes.

7 Q. Do you know whether he is any relation to the
8 Davises of Davis & Burton Trucking Company?

9 A. I think he is, yes, but I don't know exactly.

10 Q. You don't know what that relationship is?

11 A. Not exactly, no, I don't know.

12 Q. But you do know that he is related?

13 A. In some form or fashion he is, but I don't
14 know exactly what the relationship is.

15 Q. Does the Davis family live in the same area
16 where you grew up?

17 A. Yes, yes.

18 Q. So you have all lived there together in that
19 area? The Davis family and the Burton family have lived
20 there in the same area?

21 A. Yes.

22 Q. Where is that again?

23 A. You'd call it East Fork, Kentucky, I guess,
24 East Fork area, Garner area. I think they might live --

1 I said two or three miles. It might be five miles. I'm
2 not for sure.

3 Q. Do you know if there's any relationship
4 between the Burton family and the Davis family?

5 A. No. I'm pretty positive there's not a
6 relationship.

7 Q. You did know that Ken Davis was the agent for
8 the operating engineers' union, didn't you?

9 A. Yes. I know that -- business agent or B.A.
10 as they call it.

11 Q. You probably know better than I, Mr. Burton.

12 A. Yes.

13 Q. Did you have dealings with him as such?

14 A. No, no, never really dealt with Ken any.

15 Q. Did you ever have any occasion where you let
16 out bids or retained the services of Burton & Davis
17 Trucking?

18 A. I think -- yes. I didn't let out -- let's
19 see. Could you rephrase that question?

20 Q. Maybe I haven't done a good job. Did you
21 ever have an occasion when you confirmed or accepted
22 bids in connection with some hauling to be done by a
23 trucking company where Burton & Davis Trucking Company
24 submitted bids?

1 A. Yes.

2 Q. Would you tell me what that occasion was or
3 if it's more than one what --

4 A. I can remember one occasion where I think
5 they hauled some gravel around the -- up Fly Ash Dam to
6 keep -- it wasn't Davis & Burton. I mean, I put out
7 three bids to see who was going -- you know, to get some
8 gravel put on the Fly Ash Dam roadway, and they bid on
9 it.

10 Q. Do you recall whether theirs was the lowest
11 bid?

12 A. I don't recall. I really don't. I know that
13 they bid on it before, but it wants to stick in my mind
14 that it was Goodwin that actually hauled the gravel, but
15 I can't be positive.

16 Q. Was Goodwin another trucking company that had
17 contracts to haul material there on the property?

18 A. Goodwin, yes. They -- yes, I have seen them
19 in there before hauling.

20 Q. Have you noticed any other trucking companies
21 other than Burton & Davis and Goodwin?

22 A. Ken Moore Stone.

23 Q. Ken Moore Stone?

24 A. Uh-huh.

1 Q. Would you say that Burton & Davis and Goodwin
2 were the primary contractors for hauling purposes there
3 on the property?

4 A. No.

5 Q. Who would you say the primary was?

6 A. I don't think there is a primary.

7 Q. And I guess maybe when I say primary, I
8 should explain that more. Do you see Goodwin and Burton
9 & Davis trucks there more often than you do other
10 trucking companies' trucks?

11 A. No.

12 Q. Have you observed any others other than
13 Burton & Davis and Goodwin and Ken Moore Stone?

14 A. Yes, I have seen several different trucks
15 hauling there. I want to say Cyrus Trucking maybe out
16 of Louisa. I can't name specific names but, yes, there
17 are other trucking companies that come in there besides
18 those three or four or whatever I've named off.

19 Q. Do you know Mr. Mitch Thomas?

20 A. Yes.

21 Q. What is Mr. Mitch Thomas' responsibilities?

22 A. His title is plant manager. He oversees the
23 functions at the plant. I guess he's --

24 Q. The head man?

1 A. Yeah.

2 Q. Does he have anything to do with the bid
3 letting process?

4 A. No.

5 Q. If Mr. Thomas testified in his deposition
6 that he only recalls Davis & Burton Trucking -- and I
7 keep saying one before the other. I think it's actually
8 Davis & Burton and please forgive me for saying that --
9 that he can't recall any other other than Davis &
10 Burton, you would disagree with him?

11 A. Would you clarify which time, or is he
12 specifically naming one time, or is he naming several?
13 I was under the understanding that you was saying over
14 my career I've seen three different trucking companies.

15 Q. Let's say the period from '90 through '93
16 would you say they were the primary truckers?

17 A. No.

18 Q. Who would you say was the primary?

19 A. I wouldn't say there was any primary trucker.
20 I would say they was all used about the same.

21 Q. Now, you say you actually didn't have that
22 much to do with the ponds themselves in connection with
23 these dredging activities that were going on there?

24 MR. ROBERTS: Which time period?

1 BY MR. MAY:

2 Q. '90 through '93. And let's say unless I tell
3 you otherwise I'm talking about a period of '90 through
4 '93.

5 A. I have been involved in dredging the ponds.

6 Q. What was your involvement?

7 A. Kind of oversee the job along with the coal
8 yard superintendent. We kind of jointly overseed [sic]
9 it -- Wayne Maynard.

10 MR. MAY: I'm quoting on page 39 of
11 Mitch Thomas' deposition, if you want to look at it,
12 Wendell.

13 BY MR. MAY:

14 Q. If Mr. Mitch Thomas testified as follows, "We
15 had used various companies in the past to do trucking
16 for us, Davis & Burton being one. The two primary
17 contractors we use are Davis & Burton and Goodwin
18 Trucking," would you disagree with Mitch Thomas then?

19 A. In the fact that there's -- are we talking
20 about specifically on hauling ash? Are we talking
21 hauling gravel, hauling coal?

22 Q. Let's assume for hauling ash.

23 A. Well, okay. What was the question?

24 Q. Would you disagree with Mr. Mitch Thomas then

1 if he, in fact, did say in his deposition, "That the two
2 primary contractors we use are Davis & Burton and
3 Goodwin Trucking"?

4 A. I don't -- you said two primary?

5 Q. "The two primary contractors we use are
6 Davis & Burton and Goodwin Trucking."

7 A. I guess when you say "primary," that kind of
8 throws it.

9 Q. I'm just using his terminology, Mr. Burton.

10 A. Would I disagree with that? Based on what I
11 seen there at the plant, I would say he's right. That
12 might be two, yeah.

13 Q. That's all I was interested in. Just as a
14 matter of curiosity, I noticed John Arbor [phonetic] is
15 one of the incorporators -- at least a division of AEP.
16 Are you familiar with him?

17 A. No.

18 Q. No relation to those Burtons?

19 A. I wish I knew him.

20 MR. MAY: We have no further questions.

21 Thank you, Mr. Burton.

22 MR. ROBERTS: No questions.

23 (THEREUPON, the deposition was concluded
24 at 2:15 p.m.)

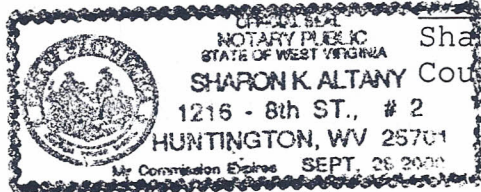
1 STATE OF KENTUCKY,
2 COUNTY OF BOYD, to-wit;
3

4 I, Sharon K. Altany, Court Reporter, within and for
5 the county and state aforesaid, do hereby certify
6 that the foregoing deposition was duly taken by and
7 before me at the time and place specified in the caption
8 hereof, the said witness having been by me first duly
9 sworn.

10 I do further certify that the said deposition
11 was correctly taken by me in stenotype notes, that the
12 same were accurately written out in full and reduced to
13 typewriting; and that said deposition is a true
14 record of the testimony given by said witness.

15 I do further certify that I am neither attorney
16 or counsel for, nor related to or employed by, any of
17 the parties to the action in which this deposition is
18 taken, and further that I am not a relative or
19 employee of any attorney or counsel employed by the
20 parties hereto or financially interested in this action.

21 Given under my hand this 21st day of March, 2000.
22



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